



UNITED STATES PATENT AND TRADEMARK OFFICE

14
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/731,899	12/08/2000	Benjamin Chain	20555/1203433-US1	1183
7278	7590	08/08/2007	EXAMINER	
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			SWARTZ, RODNEY P	
		ART UNIT		PAPER NUMBER
		1645		
		MAIL DATE	DELIVERY MODE	
		08/08/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/731,899	CHAIN, BENJAMIN	
	Examiner	Art Unit	
	Rodney P. Swartz, Ph.D.	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 8March2007.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15 and 21-35 is/are pending in the application.
 4a) Of the above claim(s) 13-15 and 33-35 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-5,10 and 21-25 is/are rejected.
 7) Claim(s) 6-9,11,12 and 26-32 is/are objected to.
 8) Claim(s) 1-15 and 21-35 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/07</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1645

DETAILED ACTION

1. Applicant's Response to Final Office Action, received 8 March 2007, is acknowledged.

Claims 1, 13, 15, 21, 26, and 27 have been amended. Claims 16-20 have been cancelled. New claims 30-35 have been added.

Claims 1-15 and 21-35 are pending. Newly added claims 33-35 are drawn to methods of immunization using peptides, and as such, would have been included in nonelected Invention II if presented at the time of the original Restriction Requirement. Therefore, Claims 13-15 and 33-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

2. Claims 1-12 and 21-32 are under consideration.

Objections/Rejections Withdrawn

3. The objection to claim 1 is withdrawn in light of the amendment of the claim.
4. The objection to claims 21 and 26 is withdrawn in light of the amendment of the claims.
5. The objection to claim 27 is withdrawn in light of the amendment of the claim.
6. The objection to claims 2-12 is withdrawn.
7. The rejection of claims 21-29 under 35 U.S.C. 112, second paragraph, as being indefinite, is withdrawn in light of the claim amendments.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

Art Unit: 1645

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-5, 10, and 21-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Perl (U.S. Pat. No. 5,879,909).

The claim is directed to a peptide "represented" by either of two formulas. Because of the terminology utilized, i.e., that the peptide is "represented" by either formula, embodiments of the claimed peptide are not restricted solely to the particular origins of components recited in the claim. Embodiments which are encompassed by the scope of the claim include peptides which comprise a T helper cell epitope.

Thus, the teachings of Perl are encompassed by the claim because, e.g., SEQ ID NO:2 is a peptide which comprises one or more T helper cell epitopes (claim 6). This construct can be "represented" by either of the formulas. For example, at least one embodiment of formula I is a peptide which begins with 1-4 amino acids, can have any number spacer amino acids, and T helper cell epitopes.

Claim Objections

10. Claims 6-9, 11, 12 and 26-32 objected to because of the following: the claims depend from rejected claims. Appropriate correction is required.

Conclusion

11. The Finality of the last office action is hereby vacated. No claims are allowed.
12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 7:30 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Jeffrey Siew, can be reached on (571)272-0787.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RODNEY P SWARTZ, PH.D
PRIMARY EXAMINER
Art Unit 1645

August 6, 2007